



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

street, and applied the brakes and slowed down the speed of his horses, and would have averted the collision but for the fact that the tire of a wheel of the wagon caught on the street car rail and the wheel slipped or skidded, causing the front wheel of the wagon to swing toward the car and strike plaintiff. Held that there was no actionable negligence on the part of the driver, but an accident for which the defendant was not liable in damages.

[Ed. Note.—For other cases, see *Municipal Corporations*, Cent. Dig. §§ 1515-1517; Dec. Dig. § 705.* 12 Va.-W. Va. Enc. Dig. 885; 14 Va.-W. Va. Enc. 974; 15 Va.-W. Va. Enc. 936.]

2. Negligence (§ 4*)—"Ordinary Care."—"Ordinary care" and its lack must largely depend on circumstances surrounding the particular transaction, and generally greater danger calls for the exercise of greater care to avoid it.

[Ed. Note.—For other cases, see *Negligence*, Cent. Dig. § 6; Dec. Dig. § 4.* 10 Va.-W. Va. Enc. Dig. 355; 14 Va.-W. Va. Enc. 764.

For other definitions, see *Words and Phrases*, First and Second Series, *Ordinary Care*.]

3. Negligence (§ 121*)—Operation—Personal Injury—Presumption and Burden of Proof.—In an action to recover damages for personal injuries, negligence will not be presumed, but the burden rests upon plaintiff to prove it affirmatively and by a preponderance of the evidence.

[Ed. Note.—For other cases, see *Negligence*, Cent. Dig. §§ 217-220, 224-228, 271; Dec. Dig. § 121.* 10 Va.-W. Va. Enc. Dig. 402; 14 Va.-W. Va. Enc. Dig. 771; 15 Va.-W. Va. Enc. Dig. 730.]

Error to Law and Chancery Court of City of Norfolk.

Action by Herbert L. Smith against the Virginia Railway & Power Company. Judgment for plaintiff, and defendant brings error. Reversed, and remanded for new trial.

H. W. Anderson and *A. D. Christian*, both of Richmond, and *W. H. Venable*, of Norfolk, for plaintiff in error.

Willcox, Cooke & Willcox, of Norfolk, for defendant in error.

BAYLY et al. v. CURLETTE et al.

March 11, 1915.

[84 S. E. 642.]

1. Wills (§ 506*)—Construction—"Heirs."—In a devise to the grandchildren of testatrix, "the present heirs and those that may hereafter be of my son," the word "heirs" is obviously used as synonymous with children.

[Ed. Note.—For other cases, see *Wills*, Cent. Dig. §§ 1090-1099;

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Dec. Dig. § 506.* 7 Va.-W. Va. Enc. Dig. 68; 14 Va.-W. Va. Enc. Dig. 506; 15 Va.-W. Va. Enc. Dig. 458.

For other definitions, see Words and Phrases, First and Second Series, Heirs.]

2. Judgment (§ 719*)—Conclusiveness—Matters Concluded—Conduct of Trust.—The testatrix devised her property, consisting of her home place and other real and personal estate, to the children of her son, share and share alike, appointed the son trustee to manage the property for them so long as he should live, and provided that, in the event of his death, the property should remain undivided until the youngest child became 21; the court to appoint a trustee. After the death of the testatrix, four of the seven children of her son filed a bill charging him with mismanagement of the estate, and asked his removal as trustee. The court found the charges of mismanagement not true, and retained him as trustee, but provided in the decree that upon certain conditions the prayer might be renewed and the trustee removed. Thereafter the trustee continued in possession of the property until all of his children had died, four of them without issue, so that the trustee inherited their shares. The children of two of the others filed a bill to have their interests under the will determined and for an accounting by the trustee. Held, that the former decree was not conclusive on the present issues, since the conditions calling for the relief asked by the complainants had arisen since that decree was entered.

[Ed. Note.—For other cases, see Judgment, Cent. Dig. §§ 1249, 1250; Dec. Dig. § 719.* 6 Va.-W. Va. Enc. Dig. 349; 14 Va.-W. Va. Enc. Dig. 466; 15 Va.-W. Va. Enc. Dig. 419.]

3. Wills (§ 684*)—Construction—Rights of Devisees—Trust Estate.—While the division of the trust estate must be postponed until the death of the trustee to await the possible contingency of other children being born to him, the rights of the heirs of the other children are fixed, subject only to open up and let in after-born children, and they are entitled to their share of the income from the trust estate.

[Ed. Note.—For other cases, see Wills, Cent. Dig. §§ 1614-1628; Dec. Dig. § 684.* 13 Va.-W. Va. Enc. Dig. 881; 14 Va.-W. Va. Enc. Dig. 1093; 15 Va.-W. Va. Enc. Dig. 1089.]

4. Wills (§ 684*)—Construction—Rights of Devisees—Income from Trust—Distribution.—Though the original beneficiaries were to enjoy the estate, in a sense, jointly, prior to its distribution, the income therefrom was not to be distributed among them according to the discretion of the trustee, but share and share alike.

[Ed. Note.—For other cases, see Wills, Cent. Dig. §§ 1614-1628;

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Dec. Dig. § 684.* 13 Va.-W. Va. Enc. Dig. 875; 14 Va.-W. Va. Enc. Dig. 15 Va.-W. Va. Enc. Dig. 1089.]

Appeal from Circuit Court, Fauquier County.

Suit by H. Clay Bayly, Sr., and others against B. Elliott Curlett, and others, for the construction of a will and an accounting by a trustee. Decree for the defendants, and plaintiffs appeal. Reversed.

Keith & Richards, of Warrenton, for appellants.

Lucien Keith and *Wm. Horgan*, both of Warrenton, and *John S. Barbour*, of Fairfax, for appellees.

CITY GAS CO. OF NORFOLK *v.* WEBB.

March 11, 1915.

[84 S. E. 645.]

1. Appeal and Error (§ 173*)—Petitions for Writ of Error—Sufficiency—Grounds.—The defense of contributory negligence cannot be relied on on writ of error, where it was not mentioned in the petition for the writ.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 1079-1089, 1091-1093, 1095-1098, 1101-1120; Dec. Dig. § 173.* 1 Va.-W. Va. Enc. Dig. 503; 14 Va.-W. Va. Enc. Dig. 80; 15 Va.-W. Va. Enc. Dig. 59.]

2. Gas (§ 19*)—Injury from Explosion—Contributory Negligence.—One who lit a match near a manhole in which gas had been allowed to collect, thereby causing an explosion, was not contributorily negligent, though he knew that gas was escaping somewhere in the vicinity, but did not know that it was in the manhole, and at the time he struck the match he could not, because of the direction of the wind, smell the gas.

[Ed. Note.—For other cases, see Gas, Cent. Dig. § 15; Dec. Dig. § 19.* 6 Va.-W. Va. Enc. Dig. 707; 14 Va.-W. Va. Enc. Dig. 497.]

3. Gas (§ 18*)—Injury from Explosion—Proximate Cause.—The negligence of a gas company in permitting gas to leak into a manhole was the proximate cause of injury to one who ignited the gas by striking a match near the manhole in order to find the valve of a water pipe, even though the particular accident could not have been anticipated, since it should have been reasonably anticipated that some injury might result from the presence of the gas, in view of the frequency with which lights are struck in such a place.

[Ed. Note.—For other cases, see Gas, Dec. Dig. § 18.* 6 Va.-W. Va. Enc. Dig. 706; 14 Va.-W. Va. Enc. Dig. 496.]

4. Gas (§ 17*)—Injury from Explosion—Degree of Care.—H-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.